TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 645.

THE UNITED STATES, APPELLANTS,

vs.

JOHN M. ASHFIELD.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 6, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 645.

THE UNITED STATES, APPELLANTS,

vs.

JOHN M. ASHFIELD.

APPEAL FROM THE COURT OF CLAIMS.

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1 Filed October 4, 1873.—J. R.

In the United States Court of Claims.

JOHN M. ASHFIELD
vs.
THE UNITED STATES. } No. 7904. Filed Oct. 4, 1873.

To the honorable the Court of Claims:

The petition of John M. Ashfield respectfully shows to your honors:

That he is a citizen of the United States, and a resident of Washington City, in the District of Columbia.

That on or about the 7th day of January, in the year eighteen hundred and sixty-seven, he was appointed a watchman in the public grounds under the Commissioner of Public Buildings, to wit, in reservation numbered two in the city of Washington, in the District of Columbia, and held said position or employment and performed the duties thereof continuously until the 12th day of April, in the year eighteen hundred and seventy.

That by the 5th section of an act of Congress approved July 28, 1866, (14 Statute', 321,) the compensation of every watchman in the public buildings and grounds under the Commissioner of Public Build-
2 ings, if less than one thousand dollars per annum, was fixed at nine hundred dollars per annum, and this provision of law remained in force and unrepealed and unchanged so long as your petitioner held the office or employment above referred to, so far as concerned your petitioner, and he was entitled thereby to receive the said rate of compensation during the period he was so employed.

It is true that in the legislative, executive, and judicial appropriation act of March 3, 1869, chapter 121, (15 Statutes, 287,) a provision is found that "the pay of all laborers and watchmen (whether night or day) employed as aforesaid," (that is to say, "in either of the departments, executive or judicial, of the Government,") "shall be seven hundred and twenty dollars per annum and no more," but subsequently in the same act (p. 298) a provision was introduced in these words:

"And this act shall not be so construed as to reduce the compensation of any employee of the Government below the amount allowed in the last or present appropriation bill."

And your petitioner avers that in the then last appropriation act the amount allowed for his compensation was at least nine hundred dollars, the appropriation being in these words: "For compensation of five watchmen on reservation number two, five thousand dollars." (Act of July 20, 1868, chapter 176, Statutes, p. 96.) And in the then present appropriation act, the appropriation for watchmen in reservation two was in these words: "For compensation of watchmen in reservation number two, three thousand dollars," (act of March 3, 1869, chapter 121, Statutes, 286,) without designating the number to be paid.

And your petitioner shows that he received the compensation due him under the act of July 28, 1866, above cited, up to and including the 30th day of June, 1869, but for the fiscal year commencing July 1,
3 1869, he has been paid at the rate of seven hundred and twenty dollars ($720) per annum only; and whereas he was entitled to the sum of seven hundred and four dollars and sixty-seven cents ($704.67) for his compensation from July 1, 1869, to April 12, 1870, inclusive, he has received only about five hundred and sixty-three dollars and

seventy-three cents, ($563.73,) leaving a balance due him of one hundred and forty dollars and ninety-four cents, (140.94.)

And your petitioner shows that upon his lawful compen sation, whatever the same may have been, he was entitled, under the act of Congress, of July 28, 1866, section 18, (14 Statutes, 323,) and the act of June 10, 1872, (Statutes, 366,) to an addition of twenty per cent.; and the said additional percentage was paid upon his compensation up to and including the 30th of June, 1869, but for the fiscal year commencing July 1, 1869, the percentage was computed and paid upon the amount of seven hundred and twenty-dollars per annum only, whereby the said percentage, instead of being computed as one hundred and eighty dollars per annum, has been computed and paid at the rate of one hundred and forty-four dollars per annum; making a loss to your petitioner of thirty-six dollars per annum, or, for the time of his service, twenty-eight dollars and eighteen cents.

And your petitioner claims in this suit:

Balance due on his annual compensation	$140 94
Balance due on his percentage	28 18
Amount claimed	169 12

And your petitioner says that he has always borne true allegiance to the Government of the United States, and has never given any aid, comfort, or countenance to rebellion against the same.

JOHN M. ASHFIELD.

4 DISTRICT OF COLUMBIA,
County of Washington:

Before the undersigned, a commissioner appointed by the United States district court, and ex-officio commissioner of the Court of Claims, on this 2d day of October, 1873, personally appeared John M. Ashfield, and signed the foregoing petition; and made oath, according to law, that no assignment of the claim in the said petition stated, or of any part thereof or interest therein, has been made; that he is justly entitled to the amount in the petition claimed from the United States, after allowing all just credits and set-offs; and that he believes the facts stated in the petition are true.

Witness my hand and seal.

[L. S.] EDWARD C. INGERSOLL,
U. S. Commissioner, D. C.

CARLISLE & MCPHERSON,
Attorneys for Claimant, Washington City, D. C.

5 In the United States Court of Claims, December term, A. D. 1872.

JOHN M. ASHFIELD
vs.
THE UNITED STATES. } No. 7904.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that

the said United States are indebted to the said claimant in the sum of one hundred and sixty-nine dollars and twelve cents, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN GOFORTH,
Assistant Attorney-General.

Filed Nov. 10, 1873.

6 In the Court of Claims.

JOHN M. ASHFIELD
vs.
THE UNITED STATES. } 7904.

At a Court of Claims held at the Capitol, in the city of Washington, the 31st day of May, A. D. 1875, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said John M. Ashfield, claimant, do have and recover of and from the United States the sum of one hundred and sixty-nine dollars and twelve cents, ($169.12.)

By the court.

A true copy of record.

7 In the Court of Claims of the United States, Dec. term, 1874.

JOHN M. ASHFIELD
vs.
THE UNITED STATES. } No. 7904.

From the judgment in the above-entitled cause, on May 31, 1875, in favor of claimant, the defendants, by their Attorney-General, on the 8th day of July, 1875, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Asst. Atty. General.

Filed July 8, 1875.

AT CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

8 In the Court of Claims of the United States.

JOHN M. ASHFIELD
vs.
THE UNITED STATES.

In this case the court finds the facts to be:

The claimant was employed in reservation No. 2 of the public grounds from the 1st January, 1867, until 11th May, 1870, under the Commissioner of Public Buildings, while that office existed, and, after it was

abolished, under the Chief Engineer of the Army in charge of the public buildings and grounds.

From the 1st January, 1867, to 30th June, 1867, he received at the rate of $900 per annum	$450 00
20 per cent. on same	90 00
From the 1st July, 1867, to the 30th June, 1868, he received his salary	$900 00
20 per cent. on same	171 00
And under act 2d March, 1867	100 00
From 1st July, 1868, to 30th June, 1869	1,000 00
From 1st July, 1869, to 11th May, 1870	500 00
And under act of 20th April, 1870	103 55

And on the facts found the court finds that the petitioner is entitled to receive from the United States the balance for his salary, at $900 per annum, 20 per cent. on same, 169.12. And the court finds, as conclusions of law, that under the act of 22 July, 1866, (14 Stat., p. 321,) the petitioner was entitled to an annual compensation at the rate of $900 per annum.

That this rate of the petitioner's compensation was not altered by the statute of March 1, 1869.

That the 2d section of the appropriation act of 1867 (14 Stat., p.
10 466) transferred the duties of the Commissioner of Public Buildings to the Chief Engineer of the Army, did not affect the jurisdiction or control of Congress over the public buildings and grounds and its own halls.

The reasons for our conclusion are stated in the opinion of the court given in this case when it was heard on demurrer, and are reported in the 9th vol. of Court of Claims Reports, p. 331.

By the court.

11 In the Court of Claims.

JOHN M. ASHFIELD
vs.
THE UNITED STATES. } No. 7904.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause and the final judgment of the court thereon; of the application of the Attorney-General for the allowance of an appeal, as filed in the clerk's office, July 8, 1875, and of the order of the chief-justice of said court allowing the same; of the findings of fact by the court and conclusions of law thereon, upon which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this seventh day of September A. D. 1875.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 645. The United States, appellants, vs. John M. Ashfield. Court of Claims. Filed 6th October, 1875.

IN THE COURT OF CLAIMS OF THE UNITED STATES.

No. 7904.

JOHN M. ASHFIELD vs. THE UNITED STATES.

COUNTER-CLAIM OF DEFENDANTS.

The defendants, by the Assistant Attorney-General, come and say that the said plaintiff, before and at the time of the commencement of this suit, was, and still is, indebted to the defendants in the sum of $275.50, for money which was paid to him without warrant of law; the said sum being 20 per cent. on his salary from the 1st of January, 1867, to the 30th of June, 1868.

Wherefore the Assistant Attorney-General prays that judgment be entered against the claimant for the sum of $275.50, aforesaid.

JOHN GOFORTH,
Assistant Attorney-General.

o

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

UNITED STATES, APPELLANTS,
vs.
JOHN M. ASHFIELD. } No. 645.

APPEAL FROM THE COURT OF CLAIMS.—SUBMITTED UNDER RULE 20.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

UNITED STATES, APPELLANTS,
vs.
JOHN M. ASHFIELD. } No. 645.

APPEAL FROM THE COURT OF CLAIMS.—SUBMITTED UNDER RULE 20.

Brief for the United States.

STATEMENT OF THE CASE.

The claimant was employed in reservation No. 2 of the public grounds from January 1, 1867, to May 11, 1870, under the Commissioner of Public Buildings, while that office existed, and after it was abolished under the Chief Engineer of the Army, in charge of the public buildings and grounds. He received—

From January 1, 1867, to June 30, 1867, at $900 per annum	$450 00
20 per cent. upon the same	90 00
From July 1, 1867, to June 30, 1868, his salary	900 00
20 per cent. upon the same	171 00
Under the act of March 2, 1867	100 00
From July 1, 1868, to June 30, 1869	1,000 00
From July 1, 1869, to May 11, 1870	500 00
Under act of April 20, 1870	103 55

The claimant alleges that the fifth section of the act of July 28, 1866, (14 Stats. at Large, 321,) fixing the compensation of watchmen under the Commissioner of Public Buildings at $900, was not repealed while he served in that capacity; and that he is therefore entitled to $140.94, plus 20 per cent. additional, under the eighteenth section of the same act, as the balance due him for services from July 1, 1869, to May 11, 1870.

The United States assert that the act of March 3, 1869, (15 Stats. at Large, 287,) reduced his pay to $720 per annum, at which rate he was paid after July 1, 1869. The claimant contends that he was not employed in an executive department, and therefore not within the terms of the section referred to; and, further, that its effect is nullified by a subsequent clause of the same statute, (p. 298.)

STATUTES AFFECTING THIS CASE.

Act of September 30, 1850, (9 Stats. at Large, 543,) fixed pay of watchmen in all Departments of the Government at $500; increased to $620 by act of April 22, 1854, (10 Stats. at Large, 276.)

The second section of the act of June 25, 1864, (13 Stats. at Large, 159,) appropriated $600 to pay watchman in reservation No. 2; increased by a subsequent clause of same act (page 160) to $720, the increase to terminate June 30, 1866.

Act of July 28, 1866, § 5, fixed pay of watchmen under Commissioner of Public Buildings (if less than $1,000) at $900, to commence July 1, 1866.

Act of March 2, 1867, (14 Stats. at Large, 456,) appropriated $4,500 for the payment of five watchmen in reservation No. 2. Having appropriated for thirteen

watchmen, specifying them, (page 456,) the act goes on to appropriate to six watchmen, without designating them in any way, $100 each, and 20 per cent. to two day and two night watchmen.

Act of July 20, 1868, (15 Stats. at Large, 96,) appropriates for compensation of five watchmen in reservation No. 2, $5,000.

Act of March 3, 1869, (15 Stats. at Large, 286,) appropriates $3,000, and, upon page 287, fixes the salary at $720.

Act of April 20, 1870, (16 Stats. at Large, 90,) gives $600 additional to five watchmen upon reservation No. 22, adding $120 to the pay of each, so as to make it up to $720.

The office of Commissioner of Public Buildings was established by act of April 29, 1816, § 2, (3 Stats. at Large, 324,) his duties to be performed under the direction of the President; but, by act of March 3, 1849, (9 Stats. at Large, 395,) the supervision of this officer was transferred from the President to the Secretary of the Interior, to whom he was ordered to report, &c., by act of August 4, 1854, § 15, (10 Stats. at Large, 573, 574.)

The act of March 2, 1867, § 2, (14 Stats. at Large, 266,) abolished the office of Commissioner of Public Buildings and transferred its duties to the Chief Engineer of the Army.

POINTS.

I.

Reference to the reports of the Secretary of War since March, 1867, will show that the Chief Engineer of the Army performed his duties relating to the public grounds under and through the Secretary of War, precisely as

the Commissioner of Public Buildings had done through the Secretary of the Interior. He never reported directly to Congress. Therefore, the watchmen on reservation No. 2, are in an *executive* department of the Government, and their salary is fixed at $720, by the act of March 3, 1869, (15 Stats. at Large, 287.) Nor can it properly be said that the classification of the act aforesaid assigns the claimant to any other department. The word "*executive,*" italicized at the commencement of the twelfth line of page 287, refers to the executive *office* and not to the executive *departments*, as is evident from the context. It is apparent from an inspection of the several items that the word "*legislative,*" immediately after the enacting clause, upon page 283, does not indicate that all those subjects for which appropriations are made, up to the word "*executive,*" on page 287, are intended to be considered as embraced within the legislative department; for, if so, this would include all those employed about the Executive Mansion, (*vide* lower half of page 286,) and the Court of Claims, (see top of page 287.)

If it be said that Congress would not surrender the control of its grounds to any department, the answer is that its control can only be exercised through agents, and the War or Interior Department can be made by legislation as responsible and effective an agency as any other. Its control over reservation No. 2 is no greater than that which it exercises over all public lands or any other Government property, and must be exerted in the same way, *i. e.*, by the passage of appropriate laws.

The control of the grounds and the subordination of employés are essentially different things. It would be more reasonable to suppose that Congress would place

the laborers upon the public grouds under the direction of some department whose officers were here throughout the year, than that it would assume that of those employed about the Executive Mansion; yet, if this claimant is treated as belonging to the legislative department, in consequence of the arrangement of this act, so must the President's door-keepers and watchmen.

In the case of the United States *vs.* Saunders, (No. 382 of the October term, 1874, not reported,) this court held that the superintendent of the Botanic Gardens and his assistants, being "under the immediate direction of the Joint Library Committee of the two houses of Congress, were, in fact, employés of this committee." By parity of reasoning, persons placed by law under the immediate direction of the War Department and its officers, are employés of an executive department.

The arrangement of the conglomerate provisions of an appropriation bill should have no weight in determining the *status* and duties of an employé, contrary to clearly-expressed law.

II.

That it was the intention of Congress to fix the salary of these watchmen at $720 is further shown by the appriations in their favor, (15 Stats. at Large, 286.) Three thousand dollars are appropiated to pay them for the year 1869–'70; and in the deficiency bill of the same year $600 are appropriated to pay five watchman, employed in reservation No. 2, $120 each, in order to make their entire pay for the current year $720 each, (16 Stats. at Large, 90.)

The objection urged by the claimant to the application of this provision upon page 287 to him is, that upon

page 298—at the conclusion of the paragraph of "*contingencies*," and just before that relating to the "United States Mint," &c.—it is provided that the act shall not be so construed as to reduce the compensation of any employé of the Government below the amount allowed in the last or present appropriation bill.

As there is no discrepancy between this provision and the sum allowed in the (then) present appropriation bill, the only effect he seeks to give to the saving clause is to preserve his salary at the amount allowed in the preceding appropriation bill, thus attempting to nullify a legislative enactment by a clause claimed to be repugnant, instead of holding the clause itself void for that reason. There is, in fact, no repugnance, and the most natural construction of the two clauses will permit them both to stand.

The act passed March 3, 1869, went immediately into operation; consequently, on that day, the salaries of all watchmen in the executive and judicial departments of the Government would have been reduced to $720 but for the proviso upon page 298, which preserved to each employé the amount allowed in the preceding appropriation bill and also any appropriation in that of March 3, 1869, in excess of the salaries prescribed therein. The effect of the saving clause was to postpone the reduction of salary until the specific appropriations then or theretofore made were exhausted. No attempt was made to reduce Mr. Ashfield's salary on or from March 3, 1869, but, as he states in his petition, "for the fiscal year commencing July 1, 1869, he has been paid at the rate of $720 *per annum* only."

III.

Mr. Ashfield receipted from month to month in full for his services, making no protest. He has thereby barred himself from making any further claim for those services.

IV.

COUNTER-CLAIM.

The claimant was not entitled to the 20 per cent. additional compensation under the act of July 28, 1866, (14 Stats. at Large, 323, § 18,) which only had reference to the employés of Congress, and not to those in an executive department, as is expressly declared by this court in the United States *vs.* Saunders, No. 382, upon the docket of the October term, 1874. The amount thus received by Ashfield was $90, June, 1867; and $171, June, 1868. [Record, pp. 4.] 2d & 4th items ※

The appropriation of 20 per cent. to some and $100 to others indicates that it was never intended that any one should receive both gratuities.

EDWIN B. SMITH,
Assistant Attorney-General.
JOHN S. BLAIR.

※ Money paid by an agent under a mistake as to the legal obligation of his principal may be recovered by the principal from the party who received it.
United States vs. Bartlett 2 Story (U.S.C.C.) 9

Supreme Court of the United States.

OCTOBER TERM, 1875.

THE UNITED STATES, *Appellants*,
vs.
JOHN M. ASHFIELD, *Appellee.*
No. 645.

Brief for Appellee.

The question in this case is the construction of acts of Congress fixing the pay of watchmen in the public grounds.

The facts upon which the question arises are distinctly stated in the petition, and in the finding of the court. Record, pp. 1 and 3.

There is no question that the salary attached to the claimant's position was, by the act of July 28, 1866, (14 Stat., 321) $900 per annum; the question is, whether it was reduced by the act of March 3, 1869, chapter 121, 15 Stats., 287.

That act reducing compensation did not reduce this claimant's salary.

1. Because it applies, in terms, to watchmen in the Executive and Judicial departments only, and this claimant was not in either of said departments, but in the Legislative—that is to say, under the Commissioner of Public Buildings, who was not attached to any Executive or Judicial Department.

2. Because, the act, if it applied to the claimant, did not reduce his salary below $900, for by its terms it did not reduce the pay of any watchman below the amount allowed by the then present or the then last appropriation bill (same act, p. 298), and it is averred in the petition, and proved by acts of Congress cited, that neither the then

present nor the then last appropriation bill allowed less than $900. (See act of July 20, 1868, chap. 176, 15 Stats., p. 96, for the then past, and act of March 3, 1869, chap. 121, 15 Statutes, p. 286, for the then present appropriation act.) If either of these acts allowed watchmen as much as $900, then their salary was not reduced below $900. Both, in fact, allowed as much, and one act of 1868 allowed more.

II.

The United States filed a counter claim alleging that the claimant had in one case received more than the law, by its true construction, allowed; but this cannot be sustained.

1. Because money paid under a mistake of law cannot be recovered back.

2. Because the court did not find that he had been so overpaid, and—

3. Because there was no over-payment, he having received only what the law allowed.

Conclusion.

We submit the judgment should be affirmed.

CARLISLE & McPHERSON,
For Appellee.